

Letter of Findings: 42-20210103
International Fuel Tax Agreement (IFTA) Assessments
for the Year 2018

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier failed to provide verifiable records required under the IFTA and Indiana tax law to support that it was entitled to a tax credit for fuel tax paid by its non-Indiana affiliate or member jurisdictions.

ISSUE

I. International Fuel Tax Agreement Tax - Burden of Proof.

Authority: IC § 6-6-4.1-4; IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; International Fuel Tax Agreement, <https://www.iftach.org/manual2020.php>; *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the assessment of additional IFTA tax.

STATEMENT OF FACTS

Taxpayer is a transportation and logistics company doing business in Indiana and outside of Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer's business records for tax year 2018, International Fuel Tax pursuant to the International Fuel Tax Agreement (IFTA). Based on the information available at the time of the audit, the audit determined that Taxpayer owed additional fuel tax plus penalty and interest.

Taxpayer protested the assessment. A hearing was held. Taxpayer requested, and was granted, additional time to provide verifiable supporting documentation. This final determination results.

I. International Fuel Tax Agreement Tax - Burden of Proof.

DISCUSSION

During the audit, the Department reviewed Taxpayer's business records pursuant to IFTA and IC § 6-6-4.1-4. The audit resulted in an assessment of additional fuel tax, interest, and penalty.

Taxpayer disagreed, stating the following:

We are protesting all charges on the assessment, which include the tax due, interest accrued and all penalties that are imposed. We reviewed you[r] audit findings and have uncovered additional information related to both the initial filings and the information that we provided you during the audit. Below is a summary of issues:

1. Total Gallons Consumed in All Jurisdictions of incorrectly filed for quarter 1 of 2018. In the data we uncovered several issues:
 - a. Duplicate fuel transactions
 - b. Refer gallons
 - c. DEF gallons
 - d. Miss keyed items
 - e. Missing fuel transactions

Included is data from our transportation management system that reconciles the initial filing of gallons

257,822 to what the correct amount should have been of 137,603.

2. When we reviewed all quarterly filings for 2018 and we found that we consumed and reported bulk fuel from another carrier's bulk fuel system. We did not provide you with details on the purchases while the gallons consumed were reported in our quarterly filings. Included with this letter is bulk purchase information. Also included is a report for complete gallons pumped from the facility by Quarter that includes the gallons pumped by [Taxpayer] trucks. You will also find attached a summary reconciliation of gallons purchased and pumped from the bulk system.

According to Taxpayer, its non-Indiana affiliate operates the referenced "bulk fuel system" in another member jurisdiction. Therefore, the issue is whether Taxpayer's supporting documents demonstrate that the audit assessment was incorrect.

IFTA is an agreement between various United States jurisdictions and Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.iftach.org/manual2020.php> (last visited June 21, 2022). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Indiana mandates that every person who is subject to a listed Indiana tax, including fuel tax, must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a); IC § 6-6-4.1-20. Thus, the person subject to fuel tax has a duty to maintain books and records and present them to the Department for review upon request. IC § 6-6-4.1-20. The taxpayer "who fails to keep the books and records as required by [IC 6-8.1-5](#) is subject to the penalty imposed under [IC 6-8.1-10-4](#)." *Id.*

Additionally, "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." IC § 6-8.1-5-1(b). Assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id.*; see also IC § 6-8.1-5-1(c). Thus, the taxpayer is required to provide verifiable documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

In this instance, prior to the hearing and subsequently after the hearing, the Department requested that Taxpayer provide the following:

1. Verifiable detail[ed] documentation to substantiate that it was [Taxpayer] which purchased and paid the fuel tax [outside of Indiana]. The verifiable documentation should include amount of fuel, purchase price, tax, and payments.
2. Verifiable documentation to substantiate that [Taxpayer] reported its [out-of-state] bulk fuel and its contemporaneous records of reconciliation.
3. For additional fuel credit [Taxpayer] claimed it had (such as 1600 retail gallons), verifiable documentation, including purchase receipts, concerning [Taxpayer's] fuel purchase at non-Pilot retail locations.

Taxpayer was unable to provide the above-requested supporting documents. Specifically, in this instance, Taxpayer referenced its non-Indiana affiliate's purchases invoices and a summary of the listed transactions which was generated by its internal computer system. According to Taxpayer, that summary - including "Date, Time, Pump, Unit, Odometer, Location, Product, Gallons, [and] Amount" - supported (1) Taxpayer's payments of its fuel purchase from its affiliate and (2) Taxpayer paid tax on those transactions in another member jurisdiction. As such, Taxpayer maintained that it was entitled to the tax credit for fuel tax paid to its non-Indiana affiliate which is located in another member jurisdiction.

Upon review, however, Taxpayer's supporting documents demonstrated otherwise. The invoices showed that Taxpayer's affiliate - not Taxpayer - purchased and paid for the fuel in another member jurisdiction. Taxpayer was not able to substantiate its assertion because according to Taxpayer, "the payments are inter-company transactions so there is no cash exchanging hands."

It should be noted that Taxpayer and its non-Indiana affiliate are separate legal entities doing business in different member jurisdictions. In this case, Taxpayer admitted, "there is no cash exchanging hands" between Taxpayer

and its non-Indiana affiliate. Clearly, Taxpayer's supporting documentation showed that Taxpayer did not pay the tax to another member jurisdiction for the fuel in question. As such, the Department is not able to agree that Taxpayer was entitled to the additional tax credit.

In short, given the totality of the circumstances, in the absence of other verifiable supporting documents, the Department is not able to agree that Taxpayer met its burden of proof as required under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

June 22, 2022

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An [html](#) version of this document.